Circular No. 42 of 2016

F.No.142/11/2016-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
***

New Delhi, dated 23rd December, 2016

Clarifications on the Direct Tax Dispute Resolution Scheme, 2016

The Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as '**the Scheme**') incorporated as Chapter X of the Finance Act, 2016 provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The provisions of the Scheme have been clarified vide Circular No.33 of 2016 dated 12.09.2016. Subsequently, further queries have been received from the field authorities and other stakeholders. The Central Government has considered the queries and decided to clarify the same in the form of questions and answers as follows.-

Question No.1: ***There are cases where the Assessing Officer (AO) has made addition on account of provisions under section 9 of the Income-tax Act, 1961 (the Act), which was later retrospectively amended, especially with regard to royalty and fees for Technical Services. What would be the position of the case of an assessee vis-à-vis the Scheme, where an addition has been made by AO before such retrospective amendment? Whether the case would be treated as one being in consequence of retrospective amendment and accordingly whether the assessee would be eligible to avail the benefit of the Scheme?***

Answer: As per clause (g) of sub-section (1) of section 201 of the Finance Act, 2016, 'specified tax' includes a tax which is validated by an amendment made to the Income-tax Act with retrospective effect. Hence, a case where an addition has been made by AO before such retrospective amendment and the addition has got validated by such amendment, is eligible to avail the Scheme provided a dispute in respect of such addition/tax is pending as on 29.02.2016.

Question No.2: ***There are assessees who have filed writ petitions in Courts against the constitutional validity of retrospective amendment to the Income-tax Act. Can the assessees who have filed such writs in Courts still contest the constitutional validity of such amendments, even after availing the benefit under the Scheme?***

Answer: As per section 203(3)(a) of the Finance Act, 2016, where the declaration under the Scheme is in respect of specified tax and the declarant has filed any writ petition before the High Court or the Supreme Court against any order in respect of the specified tax, he shall withdraw such writ petition with the leave of the Court wherever required and furnish proof of such withdrawal along with the declaration filed under the Scheme. It is hence clear that if the assessee avails the Scheme, he cannot contest the constitutional validity of retrospective amendment in the High Court or Supreme Court.

Question No.3: ***There are cases where assessees are in different stages of appeal for different years on similar issue(s). In such a situation, if an assessee avails the benefits of the Scheme for a particular year/years, whether the revenue would withdraw its appeal against the assessee, in the year(s) in which the assessee has got the relief? If such is the case, at what stage would the revenue withdraw its appeal?***

Answer: In respect of 'tax arrear', the Scheme is available only if dispute is pending before Commissioner (Appeals). Hence the question of withdrawal of appeal by revenue does not arise in such cases.

In respect of 'specified tax', section 203(3) of the Finance Act, 2016 states that the declarant before opting for the said Scheme has to withdraw his pending appeal or writ petition. It also states that in a case where the declarant has initiated or given notice for proceeding of arbitration, conciliation or mediation, he shall withdraw such notice or claim prior to filing of the declaration under the Scheme. The Scheme nowhere speaks of withdrawal of any appeal or proceeding by the revenue. Hence, the question of withdrawal of appeal by the revenue owing to opting of the Scheme by the assessee in some other year(s) on a similar issue does not arise.

Question No.4: ***Can the tax payments under the Scheme be allowed to be made in instalments, as granted under IDS, 2016?***

Answer: Since, the date of making payment under the Scheme is provided in Section 204 of the Finance Act, 2016 itself, the tax payments under the Scheme cannot be allowed to be made in instalments.

Question No.5: ***Whether an assessee is eligible to make a declaration in respect of 'specified tax' where a dispute was pending as on 29.02.2016 in form of a reference made by AO before the Committee constituted by CBDT on 28.08.2014 under section 119 of the Act, but the final order determining the 'specified tax' thereon was passed after 29.02.2016, and the* appeal/writ/arbitration/conciliation/ mediation etc. *in respect of the same was filed before commencement of the Scheme i.e. 01.06.2016?***

Answer: As per the provisions of the Scheme, a declarant may make a declaration in respect of a 'specified tax' for which a dispute was pending as on 29.02.2016. The term 'dispute pending as on 29.02.2016' refers to the tax determined under the Income-tax Act or the Wealth-tax Act which has been disputed by the assessee. In the above referred case, the specified tax has been determined by AO after 29.02.2016; hence the question of dispute pending in respect of such tax as on 29.02.2016 does not arise. Therefore, the assessee in the present case is not eligible to avail the Scheme.

Question No.6: ***Whether a penalty order under section 271C or 271CA of the Income-tax Act for which an appeal is pending with CIT(Appeals) is covered under the Scheme?***

Answer: As per the Scheme, 'tax arrear' in case of penalty is linked to the total income finally determined. Since, penalty order under section 271C or 271CA is not linked to the assessment proceedings, such orders are not covered under the Scheme.

Question No.7: ***Whether the cases in which, consequent upon search, assessments have been completed under section 143(3) of the Act shall be eligible to avail the Scheme?***

Answer: As the search cases are not eligible for the Scheme, an assessment made consequent to search under section 143(3) read with section 153B of the Act is not eligible to avail the Scheme.

Question No.8: ***Clause(5) of section 203 of the Finance Act, 2016, refers to deemed revival of 'consequences' under the Income-tax Act or the Wealth-tax Act, as the case may be, under which proceedings against the declarant are or were pending. There is no explicit reference to deemed revival of 'proceedings'. Please clarify?***

Answer: **C**lause (5) of section 203 provides that in a case where the conditions specified therein are not fulfilled, it shall be presumed as if the declaration was never made under the Scheme; therefore, in case of rejection of declaration, the proceedings pending against the assessee before issuance of certificate under 204(1) shall stand revived.

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Under Secretary to the Government of India

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